

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FACTUAL AND LEGAL ISSUES IN DISPUTE

AND NOW, come the Corrections Defendants, Weaver, Tiller, Sullivan, Davison, Maldonado, Robinson, Wittel, Allen and Kreider, by their attorneys, Thomas W. Corbett, Jr., Attorney General, Kemal Alexander Mericli, Senior Deputy Attorney General, Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, and submits the following:

LEGAL

I. Whether Mr. Fleming has failed to allege sufficient facts to support an Eighth Amendment excessive force violation where he has alleged that he was kicked in one of his ankles by a guard and that another the same guard shut a cell door slot on one of his wrists in two separate instances on the same day and on another day another guard hit his elbow with a yard gate but he does not allege or offer proof that he suffered any resulting non-de minimis physical injury? (See Thomas v. Ferguson, 361 F.Supp. 2d 435 (D.N.J. 2004).

II. Whether Mr. Fleming can maintain his claims for retaliatory misconducts when he has gotten none of them reversed on appeal? (See Carter v. McGrady, 292 F.3d 192 (3d Cir. 2002).

FACTUAL

I. Did Sgt. Tiller kick Mr. Fleming in his ankle in an effort to trip him while escorting him to the law library or did Fleming fake a stumble in order to cause an incident with Tiller?

II. Did Mr. Fleming tell the truth or lie about Sgt. Tiller having shut his wrist in a cell door slot shortly afterwards?

III. Did any of the pertinent defendants actually know that Mr. Fleming had filed a civil rights action before each of them charged him with a misconduct?

IV. Were any of the misconducts false?

V. Did C.O. Davison hit Fleming's elbow with a yard gate or did Fleming actually try to slam the gate on Davison's hand?

Respectfully submitted,

THOMAS W. CORBETT, JR.
Attorney General

By: s/Kemal Alexander Mericli
Kemal Alexander Mericli
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Date: October 12, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Factual and Legal Issues in Dispute was served upon the following via first-class mail on October 12, 2005.

Ronald Fleming
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Steelton, PA 17113

s/Kemal Alexander Mericli
Kemal Alexander Mericli
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